

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case Number 09-20503
Honorable Lawrence P. Zatkoff

v.

ERVIN ANTONIO TOLIVER,

Defendant,

ORDER

This matter is before the Court on Defendant's request for a 90-day extension of time to file a habeas motion pursuant to 28 U.S.C. § 2255. The Government has not responded, but the Court finds that the facts and legal arguments are adequately presented in Defendant's papers such that the decision process would not be significantly aided by such a response. Therefore, pursuant to E.D. Mich. L.R. 7.1 (f)(2), it is hereby ORDERED that the request be resolved on the papers submitted.

On June 3, 2010, Defendant, a pro se federal prisoner, pleaded guilty to two counts—Count one, felon in possession of a firearm under 18 U.S.C. § 922(g)(1) and, Count two, possession with intent to distribute crack cocaine under 21 U.S.C. § 841(a)(1)—according to a Rule 11 plea-agreement. Defendant faced a maximum term of incarceration of ten years and life for Counts one and two, respectively. Defendant was sentenced to 120 months as to both counts, to be served concurrently.

On June 8, 2011, the Clerk of the Court received Defendant's instant request, which is dated

May 26, 2011.¹ Defendant requests that the Court extend his June 3, 2011, deadline to file a habeas motion. The Court, however, need not address Defendant's substantive arguments, for the Court lacks jurisdiction to consider the timeliness of a § 2255 habeas motion until such a motion is filed. *United States v. Moore*, 56 F. App'x 686, 687 (6th Cir. 2003); *Reed v. United States*, 13 F. App'x 311, 313 (6th Cir. 2001). Before the filing of a § 2255 motion, no case or controversy is pending and federal courts do not render advisory opinions. *Id.*; see *U.S. Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 446, (1993). As such, the Court may not render a decision because Defendant has not yet filed a § 2255 motion.

Accordingly, Defendant's request for a 90-day extension of time to file a habeas motion pursuant to 28 U.S.C. § 2255 [dkt 29] is DENIED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: June 20, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 20, 2011.

S/Marie E. Verlinde
Case Manager
(810) 984-3290

¹For purposes of this request, the Court construes Defendant's instant request as filed on May 26, 2011, pursuant to the prison mailroom filing rule of *Houston v. Lack*, 487 U.S. 266, 270–72 (1988).